

(d) Regardless of the amount under appeal, ONRR may inform you that it will not suspend your obligation to comply with the order under paragraph (a) or (b) of this section because suspension would harm the interests of the United States or the Indian lessor.

§ 1243.9 Will ONRR continue to suspend my obligation to comply with an order if I seek judicial review in a Federal court?

(a) If you seek judicial review of an IBLA decision or other final action of the Department of the Interior regarding an order, ONRR will suspend your obligation to comply with that order pending judicial review if you continue to meet the requirements of this part.

(b) Notwithstanding the provisions of paragraph (a) of this section, ONRR may decide that it will not suspend your obligation to comply with an order. ONRR will notify you in writing of that decision and the reasons for it.

§ 1243.10 When will ONRR collect against a bond or other surety instrument or a person demonstrating financial solvency?

(a) This section applies to you if, for an appeal of an order under this part, you:

(1) Maintain a bond or an ONRR-specified surety instrument on your own behalf or for another person; or

(2) Have demonstrated financial solvency on your own behalf or for another person.

(b) ONRR may initiate collection against the bond or other surety instrument or the person demonstrating financial solvency:

(1) If the ONRR Director or the Deputy Commissioner of Indian Affairs decides your appeal adversely to you and you do not pay the amount due or appeal that decision to the IBLA under 43 CFR part 4, subpart E;

(2) If the IBLA, the Director of the Office of Hearings and Appeals, an Assistant Secretary, or the Secretary decides your appeal adversely to you, and you do not pay the amount due or pursue judicial review within 90 days of the decision;

(3) If a court of competent jurisdiction issues a final non-appealable decision adverse to you, and you do not pay

the amount due within 30 days of the decision;

(4) If you do not increase the amount of your bond or other surety instrument as required under § 1243.101(b), or otherwise fail to maintain an adequate surety instrument in effect, and you do not pay the amount due under the order within 30 days of notice from ONRR under § 1243.101(b);

(5) If the obligation to comply with an order or decision is not suspended under § 1243.8 or § 1243.9 and you do not pay the amount required under the order or decision; or

(6) If the ONRR bond-approving officer determines that you are no longer financially solvent under § 1243.202(c), and you do not pay the order amount or post a bond or other ONRR-specified surety instrument under subpart B within 30 days of that determination.

§ 1243.11 May I appeal the ONRR bond-approving officer's determination of my surety amount or financial solvency?

Any decision on your surety amount under subpart B or your financial solvency under subpart C is final and is not subject to appeal.

§ 1243.12 May I substitute a demonstration of financial solvency for a bond posted before the effective date of this rule?

If you appealed an order before June 14, 1999 and you submitted an ONRR-specified surety instrument to suspend compliance with that order, you may replace the surety with a demonstration of financial solvency under this part at an administratively convenient time, such as when the surety instrument is due for renewal.

Subpart B—Bonding Requirements

§ 1243.100 What standards must my ONRR-specified surety instrument meet?

(a) An ONRR-specified surety instrument must be in a form specified in ONRR instructions. ONRR will give you written information and standard forms for ONRR-specified surety instrument requirements.

(b) ONRR will use a bank-rating service to determine whether a financial institution has an acceptable rating to

§ 1243.101

provide a surety instrument adequate to indemnify the lessor from loss or damage.

(1) Administrative appeal bonds must be issued by a qualified surety company which the Department of the Treasury has approved.

(2) Irrevocable letters of credit or certificates of deposit must be from a financial institution acceptable to ONRR with a minimum 1-year period of coverage subject to automatic renewal up to 5 years.

§ 1243.101 How will ONRR determine the amount of my bond or other surety instrument?

(a) The ONRR bond-approving officer may approve your surety if he or she determines that the amount is adequate to guarantee payment. The amount of your surety may vary depending on the form of the surety and how long the surety is effective.

(1) The amount of the ONRR-specified surety instrument must include the principal amount owed under the order plus any accrued interest we determine is owed plus projected interest for a 1-year period.

(2) Treasury book-entry bond or note amounts must be equal to at least 120 percent of the required surety amount.

(b) If your appeal is not decided within 1 year from the filing date, you must increase the surety amount to cover additional estimated interest for another 1-year period. You must continue to do this annually on the date your appeal was filed. We will determine the additional estimated interest and notify you of the amount so you can amend your surety instrument.

(c) You may submit a single surety instrument that covers multiple appeals. You may change the instrument to add new amounts under appeal or remove amounts that have been adjudicated in your favor or that you have paid if you:

(1) Amend the single surety instrument annually on the date you filed your first appeal; and

(2) Submit a separate surety instrument for new amounts under appeal until you amend the instrument to cover the new appeals.

30 CFR Ch. VII (7–1–12 Edition)

Subpart C—Financial Solvency Requirements

§ 1243.200 How do I demonstrate financial solvency?

(a) To demonstrate financial solvency under this part, you must submit an audited consolidated balance sheet, and, if requested by the ONRR bond-approving officer, up to 3 years of tax returns to the ONRR, Debt Collection Section using:

(1) The U.S. Postal Service or private delivery at Office of Natural Resources Revenue, Office of Enforcement, P.O. Box 25165, MS 64200B, Denver, Colorado 80225–0165; or

(2) Courier or overnight delivery at Office of Natural Resources Revenue, MS 64200B, Document Processing Team, Room A–614, Bldg 85, DFC, Denver, Colorado 80225–0165.

(b) You must submit an audited consolidated balance sheet annually, and, if requested, additional annual tax returns on the date ONRR first determined that you demonstrated financial solvency as long as you have active appeals, or whenever ONRR requests.

(c) If you demonstrate financial solvency in the current calendar year, you are not required to redemonstrate financial solvency for new appeals of orders during that calendar year unless you file for protection under any provision of the U.S. Bankruptcy Code (Title 11 of the United States Code), or ONRR notifies you that you must redemonstrate financial solvency.

[64 FR 26254, May 13, 1999, as amended at 76 FR 76617, Dec. 8, 2011]

§ 1243.201 How will ONRR determine if I am financially solvent?

(a) The ONRR bond-approving officer will determine your financial solvency by examining your total net worth, including, as appropriate, the net worth of your affiliated entities.

(b) If your net worth, minus the amount we would require as surety under subpart B for all orders you have appealed is greater than \$300 million, you are presumptively deemed financially solvent, and we will not require you to post a bond or other surety instrument.

(c) If your net worth, minus the amount we would require as surety